

Decision

IN THE MATTER OF
NATIONAL CLEARANCE BUREAU ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6648. Complaint, Oct. 11, 1956—Decision, Oct. 31, 1957

Order requiring a company in East Orange, N.J., to cease selling—mainly to credit bureaus maintained by business and professional organizations, collection agencies, and finance companies—and using in its own collection business, printed “skip tracing” forms, cards, and envelopes designed to obtain information concerning alleged delinquent debtors by subterfuge through falsely representing connection with the United States Government by use of such headings as “Treasurer’s Office Disbursement Notice,” etc., and a printed picture of an eagle or the Treasury Department building or a like structure, and representing further that a check for a sum of money would be forwarded to the person addressed upon receipt of the completed questionnaire.

Mr. Edward F. Downs and *Mr. Garland S. Ferguson* supporting the complaint.

Fast & Fast, by *Mr. Herman L. Fast* and *Mr. Kenneth Fast*, of Newark, N.J., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on October 11, 1956, charging them with having engaged in certain unfair and deceptive acts and practices, in violation of the Federal Trade Commission Act. Said complaint charges, in substance, that respondents, in connection with their business of obtaining information on delinquent debtors for customers, have used certain forms in which they have falsely represented a connection with the United States Government and that the debtors who supply the information requested in the forms will receive a sum of money. Respondents, after being duly served with said complaint, appeared by counsel and filed their answer in which they admitted having used the forms referred to in the complaint, but denied that said forms contained any false representations as alleged in the complaint.

Pursuant to notice, hearings on the charges were held in New York, New York, on January 3, and March 14, 1957, before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. At said hearings testimony and other evidence

were offered in support of, and in opposition to, the allegations of the complaint, the same being duly recorded and filed in the office of the Commission. All parties were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard and to examine and cross-examine witnesses.

Following the close of the hearings, and pursuant to agreement of counsel, there was received in evidence by order of the undersigned dated April 16, 1957, an additional exhibit proffered by counsel supporting the complaint. Counsel supporting the complaint have also filed a motion to strike certain testimony and evidence, which motion is disposed of in the manner hereinafter indicated.

Pursuant to leave granted by the undersigned, proposed findings of fact, conclusions of law and an order were filed by counsel supporting the complaint and counsel for respondents. No request for oral argument was made by any of the parties. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial.

Upon consideration of the entire record herein, and from his observation of the witnesses, the undersigned finds that this proceeding is in the public interest and makes the following:

FINDINGS OF FACT

I. The Business of Respondents and the Interstate Commerce

1. Respondent National Clearance Bureau is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Its main office is located at 380 Main Street, East Orange, New Jersey. The individual respondents Abraham Montag, Melvin Montag and Edwin G. Axel are, respectively, president, secretary and treasurer of said corporation. The individual respondents Edwin G. Axel and Melvin Montag are the co-managers of said corporation and formulate, direct and control its policies and practices. The business address of the individual respondents Edwin G. Axel and Melvin Montag is the same as that of the corporate respondent.

Respondent Abraham Montag, while president of the corporate respondent, is not active in its operations, receives no salary from said respondent and is elsewhere employed on a full time basis. Said individual respondent owns a single share of stock in the corporate respondent and was made an official for corporate qualifying purposes only. Provision will hereafter be made for dismissal of the complaint as to said individual respondent, and the term "respondent," as hereinafter used, is not intended to refer to said respondent.

2. The individual respondent Edwin G. Axel, also trades and does business under the name Credit Information Bureau, with his main office located at the same address as the corporate respondent. The business operations of said respondent as Credit Information Bureau are hereinafter referred to, for convenience, by the trade name under which said respondent does business.

3. Credit Information Bureau is now, and for more than one year last past has been, engaged in the business of selling certain printed "skip tracing" forms, cards and envelopes, which are designed to obtain information relating to delinquent debtors. The customers of Credit Information Bureau are mainly credit bureaus maintained by business and professional organizations, collection agencies, finance companies, and certain large creditors desiring information concerning delinquent debtors. Credit Information Bureau solicits such customers and prospective customers, whose names are obtained from business directories, by mailing to them advertising literature (in which its method of operation and skip tracing forms are described) and order blanks for ordering such forms. The forms consist of a questionnaire which is to be completed by the debtor, a return envelope and another window-type envelope in which the questionnaire and the return envelope are enclosed for mailing to the debtor.

4. Credit Information Bureau utilizes a mailing address in Washington, D.C. for the purpose of mailing the forms to delinquent debtors of their customers, and receiving back the completed questionnaires. The customers, after purchasing the forms, fill in the name and address of the alleged debtor in the space provided on the questionnaire and mail it in the envelope furnished by Credit Information Bureau, to the latter's Washington, D.C. mailing address, from whence it is meter-mailed (with a Washington, D.C. postmark) to the addressee. If the debtor fills in the questionnaire he encloses it in the return envelope addressed to the mailing address used by Credit Information Bureau in Washington, D.C. When the envelope is received in Washington, D.C., it is forwarded, unopened, to Credit Information Bureau in East Orange, New Jersey, where the envelope is opened and the questionnaire is turned over to the customer originally seeking the information. Debtors who fill in and return the questionnaire receive a check from Credit Information Bureau in the nominal amount of 10 cents.

5. Credit Information Bureau sends out varying quantities of its advertising literature and order blanks to prospective customers located in all parts of the United States. At one time it amounted to several thousand pieces per month. However, this amount has

now been reduced to 10 to 20 pieces per month. The prices of the skip tracing forms range from approximately \$30.00 per hundred to \$1,000 for 5,000 forms. The amount of business done in such forms ranges from \$12,000 to \$15,000 per year, at least half of which is with customers located outside of the State of New Jersey. The debtors to whom the questionnaires are mailed are located in various states of the United States, other than the State of New Jersey.

In carrying on the business under the trade name of Credit Information Bureau, respondent Edwin G. Axel has engaged, and is now engaging, in substantial commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various states of the United States by virtue of the activities above described, including the transmission in commerce of advertising matter, "skip tracer" forms, checks, letters and other written instruments.

6. Respondent National Clearance Bureau is a collection agency which specializes in the collection of professional accounts, mainly medical. In the course of its business said respondent purchases skip tracing forms from Credit Information Bureau for the purpose of obtaining information concerning delinquent debtors of its customers. During the period of about a year since it was organized in November or December 1955, said respondent has purchased approximately \$500.00 worth of such forms. The forms purchased by said respondent are handled in the same manner as those purchased by other customers of Credit Information Bureau, *viz.*, after the name and address of the debtor are filled in by it on the questionnaire it is mailed to Washington, D.C. for meter-mailing to the debtor, and after the questionnaire has been returned by the debtor to the Washington, D.C. address, it is forwarded to East Orange, New Jersey, where the information is turned over to the corporate respondent.

The record discloses that in addition to purchasing skip tracing forms from Credit Information Bureau, the corporate respondent on two occasions in March and April of 1956, solicited a prospective customer in Garden City, New York, for the purpose of selling skip tracing forms to the latter. While it is undisputed that such solicitations were made on the stationery of the corporate respondent, respondent Edwin G. Axel who dictated the letters testified that the use of the stationery of the corporate respondent was due to a clerical error on the part of the stenographer and that the stationery of Credit Information Bureau should have been used instead.

The undersigned finds it unnecessary to resolve the conflict in the evidence on the question of whether the corporate respondent has

solicited the sale of skip tracing forms in interstate commerce on its own behalf. In view of the fact that said corporate respondent has regularly purchased the skip-tracing forms of Credit Information Bureau for the collection of its own delinquent accounts and has transmitted them through the United States mails across State lines for the purpose of obtaining information concerning delinquent debtors in the manner above found, it is found that said corporate respondent, together and its dominant figures, Edwin G. Axel and Melvin Montag, have engaged and are now engaged in substantial commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.¹

II. The Alleged Unfair and Deceptive Practices

A. *The "Skip Tracing" Forms*

1. The charge that respondents have engaged in unfair and deceptive acts and practices arises out of the composition and makeup of the "skip tracing" forms which are mailed to delinquent debtors or other persons from whom information is sought. Central to respondents' method of operation is the questionnaire form. The form now in use is a card of the IBM tabulating size. The card is designated on the front side thereof as a "DISBURSEMENT CERTIFICATE." It also contains on its face a picture of an eagle and the address "Treasurer's Office, Headquarters Building, Washington, D.C." There also appears on the face of the card the facsimile of a seal enclosing the picture of an indeterminate structure of the classical design typical of many government buildings, and bearing the legend "Treasurer's Office, Washington, D.C."

In the center of the card, directly beneath the picture of the eagle and the address "Treasurer's Office, Headquarters Building, Washington, D.C.," appears the following legend:

If you will fill in the reverse side of this blank giving the requested information we will forward you a Treasurer's Certificate with a small sum of money which we have on deposit for you for that purpose. Disbursement will be sent to the address given registered in your name.

On the reverse side of the card, at the top thereof, appears the legend: "CONFIDENTIAL OFFICE QUESTIONNAIRE," beneath which is a series of blanks calling for the following information concerning the debtor: "Name, Age, Number and Street, City, State, Employed by, Address, Phone, Spouse's Name, Bank with,

¹ It may be noted that in their answer respondents admit the allegation of the complaint with respect to their engagement in commerce, except that they deny their business is "extensive commercial intercourse in commerce."

Make of Car, State & Tag," etc. The back of the card also bears the legend:

Disbursement check will not be sent unless all information is given. * * *
Fill in and return blank within thirty days. Allow two weeks for mailing disbursement.

7. Prior to the use of the present form of questionnaire, Credit Information Bureau utilized other questionnaires which were substantially similar in form. Some of these forms were designated as "Disbursement Notice" instead of the present designation of "Disbursement Certificate." However, they were otherwise substantially similar to the form above described in composition and make-up.

8. The return envelope which is enclosed with the questionnaire, for use in returning the completed questionnaire, is similar in color and size to that used by Government agencies, and contains the address "Treasurer's Office, Headquarters Building, Washington 6, D.C." The outer glass-window envelope, in which the addressed questionnaire and return envelope are mailed to the delinquent debtor, is similar in color and contains the return address "Treasurer's Office, Headquarters Building, Washington 6, D.C."

Prior to the use of the present mailing address in Washington, D.C. on its forms, Credit Information Bureau utilized the address "Disbursement Office, 1424 K Street N.W., Washington 5, D.C."

9. Respondents have never maintained any office where they transact business in Washington, D.C., other than the above addresses which are merely mailing and telephone answering service addresses and are used solely for the purpose of mailing and receiving the envelopes containing the skip tracing forms. Respondents have no employees in Washington, D.C., but pay the company which operates the mailing service a monthly fee for handling respondents' mail.

10. It has been the practice of respondents, in connection with the above forms, to send to persons who complete and return the questionnaire, a check in the amount of 10 cents. At one time the checks contained the name of the payor as "Disbursement Office, N.C.B.," the latter being the initials of the corporate respondent. At the present time the checks bear the name of Credit Information Bureau.

B. The Representations Made

1. Respondents, by the use of the forms above described, represent and imply, and place instruments in the hands of their customers whereby they may represent and imply, to the recipients

